

Issues from BPA, Bureau and Corps Letter on
Preliminary Draft Temperature TMDL

November 25, 2002 - Draft/MLS

Bureau Letter

Legal Issues

- Approach of using the dams part of the natural background
- Oregon standards - target temperatures

Implementation Issues

- TMDL Implementation Plan should be phased - incorporate economic feasibility

Technical Issues

- Canadian load allocations?

BPA Letter - November 5, 2002

Legal Issues

- Columbia River uses - what is the CWA requirement to use most stringent
- EPA's methodology precludes uses - Section 102 recognizes multi-purpose approach
- Sovereign immunity - Congressional approved project are specific mandates from Congress - Section 313 is general - the specific prevails over the general
- Columbia River Mile 4/Canada load contributions - provides extreme temperature targets
- FACA recommendations
- EPA's TMDL will encourage protracted litigation
- TMDL has not addressed if dams are point sources or non-point sources

Technical Issues

- EPA fails to address scientific integrity and sufficiency of data

Corps Letter - November 6, 2002

- Concurs with comments from Bureau and BPA

Legal Issues

- Methodology - implications related to continued existence of dams - there are limited practical operational or structural solutions
- FACA Report
- "Dams are a source of heat" is misleading - the source of heat is the solar source.
- Juvenile bypass facilities - TMDL should not be applicable here

- Corps is concerned that this is inconsistent with the NWF case
- Failure to address all uses by limiting to the most sensitive species
- TMDL should not apply to project facilities
- Natural conditions - states standards

Wildlife Refuge

- 99% confidence levels